

Food Safety News

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Should Farmers Market Vendors Carry Product Liability Insurance?

Why should you care?

By Cookson Beecher | November 20, 2012

You're there at your favorite farmers market. As always, you stop by one of the farm stands where you regularly shop to buy some fresh veggies and fruit. The farmer greets you with a welcoming smile and asks how you liked the food you bought from him last week. Giving him a strong affirmative nod, you ask how things are going out at the farm.

As you put the fresh produce in your bag, you can't help but feel glad to be part of a growing movement to buy from local farmers. Not only is it a way to help keep them in business, it also helps protect farmland from being developed.



But have you ever asked the farmers you buy from at a farmers market if they carry product liability insurance? And why would that be important to know? Isn't knowing their names and where their farms are good enough?

What is Product Liability Insurance?

In the case of farmers, product liability insurance helps protect them should a food they produce for sale harm consumers. The word "lawsuit" comes immediately to mind, since lawyers are often called in to sue the offending party.

But there's another side of the coin to consider. For the victims of a foodborne illness, one of the main worries is the medical expenses, which can be staggeringly high — sometimes up to \$1 million or more.

Foodborne illnesses are caused by bacteria, viruses or protozoa on or in contaminated food. Salmonella, E. coli, listeria, and campylobacter are examples of these pathogens. The young, the elderly and those with weakened immune systems are the most likely to fall victim to foodborne illnesses and the most likely to suffer the most harm from them.

According to the federal Centers for Disease Control and Prevention, each year roughly 1 in 6 Americans (or 48 million people) gets sick, 128,000 are hospitalized and 3,000 die as a result of foodborne diseases.

With news about foodborne illness outbreaks linked to types of foods sold at farmers markets, such as milk, cheese, fruits and vegetables – and even meats – being reported on a regular basis, the benefits of following good agricultural practices (GAPs) and carrying product liability insurance come to the fore.

During last year's Focus on Farming Conference in Everett, WA, food safety attorney Bill Marler (publisher of **Food Safety News**) was a keynote speaker. Marler told a Washington State Department of Agriculture official that while doing food safety planning and getting Good Agricultural Practices certification reduces the chances that a farmer will get someone sick, it wouldn't protect the farmer from a lawsuit.

"That's why you need product liability insurance should you get sued," he said. "By doing that, you're protecting yourself as an individual."

General liability, meanwhile, is designed to cover risks that may include bodily injury or property damage caused by direct or indirect actions of the insured; for example, it would cover a market canopy falling over during a windstorm and injuring a customer.

What About Farmers Markets?

Many farmers markets — but not all — require their vendors to carry product liability insurance. And many farmers carry it anyway.

Susan Schuh, co-owner of Schuh Farms near Mount Vernon, WA, said she's always had it — for about 25 years now — even before her farm started selling at farmers markets.

"It has always been part of our insurance package," she said. "We sell to the public. It's not just our friends and neighbors who are eating our food."

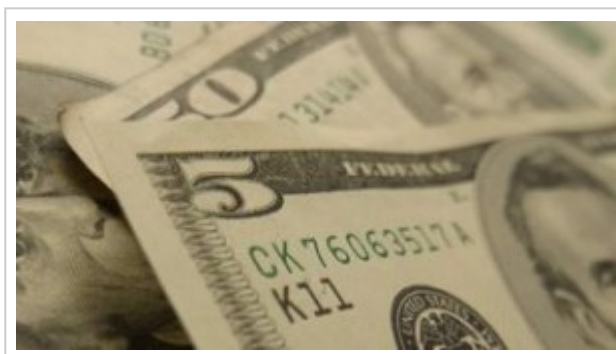
Although the farm has never been associated with a foodborne illness, Schuh likes knowing that the insurance she carries gives her customers "an added layer of protection."

On a financial level, the insurance is also necessary, she said, "because we have a net worth."

She said she'd like to see all farmers markets require that their vendors carry product liability insurance.

"It would be good if they did," she said.

But We're Too Small . . .



Many small-scale farmers say they wouldn't be able to afford the insurance — that their profits are so slim that buying insurance would put them out of the game.

This is particularly true for the farmers who sell at farmers markets. Some of them are farming on five acres or less. Farmers market managers fear that if they require vendors to get insurance, some of them will drop out. And in some areas, getting enough farmers to sell at local farmers markets is already a challenge.

Bottom line: a farmers market without farmers is not a farmers market. Customers come to buy locally grown food. If there isn't enough of it, they won't come back.

Many of these small-scale farmers say they take special care to make sure they're doing what's necessary to prevent their food from being contaminated by pathogens.

“We follow good farming practices,” said Tom Hohmann, co-owner of The Walled Garden Produce in Western Washington, and one of the main farm vendors at the Sedro-Woolley Farmers Market. “We’re very meticulous about cleanliness. We keep the vegetables cool. We don’t use manure. We sterilize all surfaces and sinks, and we’re always washing our hands.”

Because he and his wife Lynn do all of the picking, they don’t need to rely on outside help, which is yet another safeguard to preventing potential food-safety problems. Following organic farming standards is also a plus when it comes to food safety, he said.

“We want to keep the food we grow healthy for our family and our customers,” he said.

While organic standards don’t equate to good agricultural practices (GAPs), the food safety standards for growing product, having organic certification necessarily means a farmer is taking certain food safety precautions.

When asked if he’d get insurance if the Sedro-Woolley Farmers Market were to require it, he didn’t have a ready answer.

“It’s a pretty substantial amount to pay,” he said, referring to a ballpark figure of \$250 to \$425 per year. “It would make us think twice.”

The Amateur Farmer

But as well-intentioned as some small-scale farmers may be, some of them can make innocent mistakes, said Bradley W. Sullivan, a California attorney who specializes in defending farms, growers and shippers. And while he won’t refer to the case specifically, he said one of the worst cases he was involved in was a farmers market case.

The problem, he said, is that some of the farmers who sell at farmers markets are what could be called “amateur farmers.” And just as in sports or literature, for example, amateurs can make serious mistakes.

He saw that firsthand in a case that involved people who ate some “artisan salad greens” and came down with Hepatitis C. That happened, he said, because a farmer had unknowingly used compost made from human sewage sludge that hadn’t been thoroughly composted.

Sullivan said that the farmer, who bought the compost at a farm supply store, assumed it was the perfect thing to add to her raised beds where she grew salad greens. She hadn’t known that she should have asked to see a certificate of analysis to make sure it was properly composted.

Referring to the medical expenses that can result from a foodborne illness, Sullivan cited the steep costs associated with complications that can come with E. coli. If, for example, a person’s kidneys shut down, a condition called hemolytic uremic syndrome, medical expenses quickly mount.

Sullivan said it can cost as much as \$5,000 to \$6,000 a day to be in critical care, not to mention that a patient can be there for two weeks or more.



“People don’t realize the expenses involved in foodborne illnesses,” Sullivan said. “Some of them can come to a million dollars or more.”

And then there are the expenses that can come when a victim’s relatives sue because a relative has died. In last year’s listeria outbreak caused by cantaloupe from a Colorado farm, more than 30 people died from eating contaminated cantaloupe.

With that outbreak in mind, the Greeley, Colorado Farmers Market decided this year to require all of its vendors to carry at least \$600,000 in general and product liability insurance. But like at other farmers markets, the worry there was that some of the smaller farmers would drop out of the market.

Now that the market has finished its first season with the new requirement in place, Karen Scopel, an official with the City of Greeley, which operates the market, said she knows of only one vendor who dropped out “purportedly due to the insurance.” But she also said that the vendor had indicated there were some health issues involved in the decision.

“While we had fewer vendors than in prior years, I cannot directly link that to the insurance requirement,” she told **Food Safety News**.

As it turned out, most of the farmers at the market either had insurance already or acknowledged that this was something they knew they needed to have.

The City of Greeley operates the market and is self-insured for any claims that arise from its own actions.

Scopel said that product liability insurance is intended to protect vendors from personal loss due to claims related to their products.

As for other farmers markets in Colorado, Scopel said that the majority have product liability insurance requirements for their vendors.

“We were several years behind most in requiring it,” she said.

A Manager’s Perspective

Jerry Lami, executive director of the West Coast Farmers Market Association in California, told **Food Safety News** that all of the vendors who sell at the markets in the Association have to have product liability insurance.

“There are certain expenses when you own a business,” said Lami. “If you can’t afford them, you can’t afford to have your own business.”

Product liability insurance is important, he said, because it covers medical expenses should a customer come down with a foodborne illness. It also helps protect a farmer from losing the farm.

Formerly a vendor at a farmers market himself, Lami said you don’t want to put anyone at risk, and that includes the shoppers, the landlord, the cities, and public facilities such as schools, libraries, and parks hosting the markets.

“Any location hosting a farmers market wants insurance,” he said. “They’re the ones with the deepest pockets. They’re the ones the lawyers will go after. They’re making sure that I indemnify them. I have to be sure everyone’s safe.”

As for the market shoppers, Lami said he doesn't think most of them think about insurance.

"You only think about it when something goes wrong," he said.

In Massachusetts, Martha Sweet, operations manager for the Federation of Massachusetts Farmers Markets, said that while most of the farmers markets in the state require vendors to carry product liability insurance, not all of them do.

The three farmers markets the federation manages requires all vendors to carry \$100,000 in insurance.

"It's a flat-out requirement," Sweet said. "Sure, there are some people who risk it, but not with us. For us, it's a black-and-white policy."

Pointing out that insurance rates can be competitive, she always advises farmers to shop around.

Galena Ojiem, administrative assistant at the Farmers Markets Federation of New York, said farmers markets in the federation normally require that vendors carry the insurance.

She does know, however, that it can be financially difficult for some small-scale farmers to buy the insurance.

"But it's not worth not having it," she said. "If you can't afford it, a farmers market is the wrong place for you to be."

Her organization runs an insurance program that services all of the farmers markets in the federation. She said that for the vendors, the insurance protects them from "bankrupting the farm."

Policies through the federation's insurance program run about \$300 per year.

But when it comes to the customers, Ojiem said that most don't think about whether the vendors carry product liability insurance.

"They think that because the food is fresh and local it should be better for them," she said. "I don't think insurance is something they think about."

In Washington state, Karen Kinney, interim director of the Washington State Farmers Market Association, said product liability is something "we're all trying to figure out."

"Everyone takes food safety so seriously," she said. "Everyone is concerned."

And while all of the Association's markets must carry general and product liability insurance, Kinney said that there's no such requirement for the vendors.

"But we're coming out stronger and stronger for food vendors to carry it," Kinney said. "It's a real Catch 22. So many of the farmers are just little farmers. But I think we're coming to a crossroads point where we realize we have to figure out a solution."

Along those lines, Kinney said the association is educating farmers about getting coverage for their businesses.

A Trend, or Not?

Larry Spilker of Campbell Risk Management in Indianapolis, which offers product liability to farmers market vendors, says he hasn't seen a strong upward trend in farmers market vendors getting product liability insurance.

"It stays pretty steady," he says, "but I think there's more awareness about it out there. Everyone's entertaining the idea of getting it."

Spilker also stresses the problem of costliness of insurance for small farmers.

"By the time they pay their fees to be in the market and then add insurance to that, they're paying more to be in the market than they make in sales," he said.

Or, as Kinney of the Washington State Farmers Market Association, says: "They're trying to operate in a system that's not priced for it."

How Expensive Is It?

Rates for product liability can vary. The Campbell Risk Management's National Farmers Market Vendor Liability Insurance Program's premiums, negotiated at a group rate, vary from \$250 to \$425 per year, depending on the state, for vendors who generate less than \$100,000 total annual sales at the markets listed. For vendors who generate more than that in annual sales, the cost of the policy will increase at a rate of approximately \$5 per thousand in sales.

The insurance provides \$1 million per occurrence in both general and product liability coverage with no deductible and a \$2 million annual aggregate limit.

The coverage applies to all markets the vendor participates in as long as each market is disclosed on the insurance application form.

The products can include anything seen at a typical farmers market — even items such as mushrooms, homemade cosmetics, home-processed poultry or other meats, eggs and crafts. However, the vendor must follow all applicable federal, state and local permitting requirements.

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